he will give as a half course in the first half year. He will also give Pleading, or Civil Procedure at Common Law, as it is officially called, two hours a week in the second half year, and is preparing a new case book on the subject. Professor Gray continues to give his courses in third year Property and in Evidence, but has relinquished Constitutional Law, which will be conducted by Professor Wambaugh as a half course, one hour a week. Professor Wambaugh's course on Insurance will be given by Mr. Samuel Hudson Hollis, LL.B. 1901, and Admiralty by Mr. Clarence H. Olson, LL.B. 1904. Both Mr. Hollis and Mr. Olson are former editors of the REVIEW. The course on Civil Procedure under the New York Code is announced, but it is still undecided who will conduct it. Quasi-Contracts will be omitted. Assistant Professor Wyman, who continues to give Carriers and Suretyship, has promised six lectures on "International Relations — Special Topics in the Law of Peace and War." The rest of the curriculum is the same as that of last year.

ENTRIES MADE BY A PERSON OTHER THAN THE ORIGINAL OBSERVER. — When a book is composed of entries made by a clerk from his personal observation, it can readily be used in evidence. If the clerk is alive he can testify to the transactions, using the book to refresh his recollection.[1] If he is dead the book itself is admissible as an entry made in the course of duty.[2] But in the course of modern business entries are seldom made by one person, being usually the result of the co-operation of two or even more. A typical case is where a foreman makes reports of transactions coming under his observation, and a clerk or book-keeper enters them in a day book. Where both these parties are alive and can testify, such a book can generally be used as evidence, the common practice being to allow the book itself to go to the jury upon their sworn testimony that the transactions were correctly observed and accurately copied.[3]

The difficult question arises when the original observer is not in court to testify to the correctness of his reports. Under these circumstances there is considerable conflict in regard to the admission of the book. Some courts refuse to admit the evidence at all.[4] If, however, as is often the case, the person who reported the transaction is dead, there would seem to be no objection to admitting his report as an original declaration made by him in the course of duty, for the fact that the report first took permanent form at the hands of the book-keeper should not destroy its trustworthiness when the latter is present to testify to the correctness of his copy.[5] The same should be true when the original observer is outside the jurisdiction, or for any other reason unavailable. Since the ground for admitting declarations in the course of duty, apart from the probability of their truth, is the impossibility of obtaining the testimony of the witness himself, it would seem of no consequence whether this impossibility is the result of death or other circumstances over which the parties have equally

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[1] Greenl. Evid. 16th ed. § 439 a.
[2] Nichols *v.* Webb, 8 Wheat. (U. S.) 326.
[3] Mayor of New York *v.* Second Ave. R. R. Co., 102 N. Y. 576; Hurley *v.* Macey, 87 N. Y. Supp. 924.
[4] Kent *v.* Garvin, 1 Gray (Mass.) 148.
[5] Greenl. Evid. 16th ed. § 120 a.

little control.[6] Accordingly many courts will admit this evidence upon proof that the original observer is unavailable.[7]

The Missouri Court of Appeals has recently handed down even a broader decision. The plaintiff's clerk kept a book of entries made from scale tickets recording the weighing of cattle. The court not only dispensed with the testimony of the persons who made the tickets, but admitted the book under the suppletory oath of the clerk, without proof that these persons were unavailable. *Drumm-Flato Com. Co.* v. *Derlach Bank*, 81 S. W. Rep. 503. Although such a decision as this cannot be brought within any of the exceptions to the rule against hearsay, there are a considerable number of cases which seem to go as far.[8] It must be justified if at all on practical considerations. Taking into account the purely mechanical way in which the reports were probably made, and the improbability that the maker even if present would remember this one out of possibly one hundred similar transactions, it may be that the case is founded on common sense whether it be technically accurate or not.

THE CESTUI'S RIGHT AGAINST A TRANSFEREE FROM THE TRUSTEE. — Until the latter part of the fifteenth century it was the law that if the feoffee to uses enfeoffed another, the *cestui que use* had no remedy against the new feoffee.[1] So too if the feoffee died, the heir was seised to his own use.[2] The *cestui's* interest in the property was merely the personal right to call upon the trustee to convey the *res*.[3] If the trustee conveyed away the property or died, in which case he could no longer perform the obligation, the *cestui's* right was destroyed. While the courts of equity subsequently gave the *cestui* greater protection, the nature of his right was not changed. They did not make his right attach to the property, for that would make it a right *in rem* and equity acted only *in personam;* but, on equitable principles, they did create new rights, in regard to this property as against subsequent holders. These rights are not based upon any artificial doctrine of notice. It is commonly said that knowledge of facts sufficient to excite an inquiry, which would lead to a discovery of certain equitable interests, charges the person with notice of these interests;[4] and again that gross inadequacy of consideration, since it should put a purchaser upon inquiry, is sufficient to charge such purchaser with constructive notice.[5] Yet in both these cases the purchaser seems really liable because by not exercising due care he has enabled the trustee to destroy the original right which the *cestui* had against him. So too it is said that the volunteer has constructive notice.[6] The just decision in a New York case makes such a position untenable.[7] A trustee died leaving the trust property to five persons in equal parts. One of these devisees bought the shares of the others, and

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[6] North Bank *v.* Abbot, 13 Pick. (Mass.) 465.
[7] American Surety Co. *v.* Pauly, 38 U. S. App. 254.
[8] Fields *v.* Collier, 13 Ga. 499; Nelson *v.* Bank, 32 U. S. App. 554.

[1] Note, Fitz. Ab. Subp. pl. 19, cited in Ames Cas. on Trusts, 2d ed., 282.
[2] Anon., Kerlw. 46 b. pl. 7, cited in Ames Cas. on Trusts, 2d ed., 282, n. 2.
[3] Watts *v.* Turner, 1 Russ. & M. 634.
[4] Simmons, etc., Co. *v.* Doran, 142 U. S. 417.
[5] Hume *v.* Ware, 87 Tex. 380.
[6] See Lewin on Trusts, 9th ed., 976, 977.
[7] Giddings *v.* Eastman, etc., 5 Paige (N. Y.) 561.